THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 8972 of 2006

O r d e r:

The petitioner, who is working as Deputy General Manager with A.P. State Trading Corporation, Hyderabad, has filed this writ petition assailing the proceedings dated 22.04.2006, passed by the respondent, namely the Vice-Chairman and Managing Director, placing him under suspension, pending enquiry into the charges.

The learned counsel submits that on the directions of the General Manager (Exports and Imports), the Manager (Imports) had put up a proposal for import of Teak Wood (Timber) from Myanmar with the assistance of an associate, namely M/s. Anuradha Timber Estates, and forwarded the same to the petitioner, who in turn, forwarded the same to the General Manager (Exports and Imports), who in turn forwarded it to the Managing Director, for approval on 24.01.2003. Pursuant thereto, as per the directions of the Managing Director, the officers concerned held preliminary deliberations with the associate, which resulted in the General Manager (Exports and Imports) entering into a Memorandum of Understanding (MoU) with the associate for import of Timber on 06.02.2003. Thereafter, the Managing Director placed the matter before the Board of Directors, who in their meeting held on 28.03.2003 approved the proposal and permitted the Managing Director to take such action as deemed fit in the matter of disposal of the imported teak logs.

The learned counsel for the petitioner submits that while the import and sale transaction of Timber in pursuance of the MoU was being worked out, the respondent *inter alia* contending that the

petitioner had entered into MoU with the associate without verifying its financial and business worthiness for import of timber; import and disposal of timber have been carried out in gross violation of the terms of the MoU, resulting in unlawful gain to the associate and loss to the respondent, had released the entire deposit amount of Rs.45.00 lakhs to the associate before disposal of entire timber and that he had failed to take prior import permit for Phytosanitary certificate, has placed him under suspension.

The learned counsel for the petitioner having taken me through the events that preceded the finalization of the proposal for import of Timber by the Board of Directors, as recorded above, submitted that the petitioner at no stage of finalization of the proposal for import of Timber through the assistance of the associate, had any decision making or decision taking role to play. She submitted that the petitioner is a middle level officer in the managerial hierarchy of the respondent, in that, below him is the Manager, above him is the General Manager, the Managing Director, and the Board of Directors. The decision-making authorities are the General Manager, Managing Director and the Board of Directors. The petitioner is neither a decision making nor a decision taking authority. His duties, as allocated by office order dated 12.10.2001, are to scrutinize the files relating to the Division, ensure that files are promptly attended to and decisions implemented promptly, monitor the duties of the functional Managers reporting to him, and maintain the accounts of the Division with the assistance of the Accounts Officer. However, the respondent oblivious to the fact that the petitioner is not a decision making or decision taking authority, yet had placed him under suspension, while they have spared the Manager, who had put up the proposal, the General Manager (Finance), who gave financial approval and

Managing Director, who had approved the proposal, from taking any action against them.

She submitted that though the respondent placed the General Manager (Exports and Imports) under suspension in connection with the import of Timber, he had been charged for irregularities in import of D.L. Methionine and export of Iron and Soyabean Meal also, and the said charges, have no connection to the present transaction, and if common enquiry initiated against the petitioner and the General Manager (Exports and Imports), is allowed to go, there is every possibility of the enquiry being delayed, for the Enquiry Officer, apart from going into the charges of import of Timber, would also enquire into the charges of irregularities in the import and export of other materials, alleged against the General Manager (Exports and Imports), which charges have no connection to the import of Timber, alleged against the petitioner, and as such, prayed that the common enquiry initiated against the petitioner and the General Manager (Exports and Imports) be separated. She submitted that though the petitioner had submitted his explanation to the charges on two occasions – one on 27.12.2005 and the other on 09.06.2006, the respondent has not taken any steps to revoke his suspension nor complete the enquiry. She submitted that the petitioner is presently not working as Deputy General Manager (Exports and Imports), since 12.02.2004, he has been working as Deputy General Manager (Note Books Division), and there is no point in continuing the petitioner under suspension, for he will have no access to the records relating to the import of timber. She submitted that the petitioner has put in 26 long years of unblemished service, and he is due for retirement in June, 2007, and placing him under suspension for an indefinite period, without completing the enquiry, initiated against him, is illegal and arbitrary, and thus prayed

that the order of suspension be revoked and the enquiry initiated against him be expedited.

The learned counsel for the petitioner submitted that since Sri. Suthirtha Bhattacharya, IAS, Commissioner of Industries, who has been appointed as Enquiry Officer, to conduct common enquiry against the petitioner and the General Manager (Exports and Imports), has in relation to the import of Timber, while acting as In-charge Vice Chairman and Managing Director of the respondent, has taken certain decisions, he cannot be continued as Enquiry Officer, for he would support the respondent, and the enquiry would be merely an empty formality.

The learned Standing Counsel appearing on behalf of the respondent denied the allegations made by the petitioner in support of the writ petition. He submitted that the petitioner before forwarding the proposal put up by the Manager (Imports) was required to verify the financial and business worthiness of the associate, which he did not do, and as a result thereof, the Board of Directors had to take a wrong decision. The petitioner being an authority, responsible for implementing the decisions taken by his superiors, was required to implement the MoU in its letter and spirit, but contrary to the terms and conditions of the MoU, and much before the entire import and sale transaction of Timber was worked out, the petitioner had facilitated the associate to take back the Rs.45.00 lakhs, which he had provided as security, and this has resulted in the respondent suffering losses. The petitioner had failed to arrange Dealers in terms of the MoU for sale of the imported Timber. The associate, who was required to find customers for sale of the imported Timber, through their sister concerns, had purchased the best quality Timber, leaving the second quality timber for the respondent to sell. As a result of this, the second

quality Timber lying in godowns of the respondent, remained unsold, and thereby the respondent had to suffer huge losses. He denied the contention of the petitioner that no action had been taken against the other officers involved in the import of Timber. He submitted that since the Manager (Imports) had merely put up the note, a charge memo was issued to him. No action was initiated against the General Manager (Finance) because he retired from service. The General Manager (Exports and Imports) has been placed under suspension. As the respondent has no power to initiate action against the Managing Director, they have requested the Government to initiate necessary action against the former Managing Director, who was responsible for the import of Timber. Replying to the contention of the petitioner that Sri Suthirtha Bhattacharya, IAS, Commissioner of Industries, cannot be appointed as Enquiry Officer, for he had while acting as Vice Chairman and Managing Director has taken certain actions in relation to import of Timber, the learned Standing Counsel for the respondent submitted that he would request the respondent and the Government to change the Enquiry Officer, to facilitate a free, fair and impartial enquiry. At any rate, he submitted that the petitioner has been placed under suspension, pending enquiry into the charges leveled against him, and whether the petitioner is a decision making or decision taking authority or whether his actions resulted in the respondent suffering losses, are all matters of enquiry, and as such, it is not proper for this Court to interfere with the order of suspension. He, thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-A.P. State Trading Corporation.

Suspension pending enquiry, is not a punishment. An order of suspension, is an administrative order, it is not a quasi-judicial order.

An order of suspension temporarily deprives the officer of his functions or his right to discharge his duties, but it does not amount to any lowering down or reduction of his rank or status. During the period of suspension, the officer is paid subsistence allowance. Placing an officer under suspension depends upon several factors, namely the gravity of the offence with which the officer is charged, his influence in the department and his accessibility to the records and the witnesses. An order of suspension is normally made by the appointing authority or the authority to whom such power is delegated, pending enquiry into the allegations leveled against the charged officer. The main object of placing an officer under suspension, against whom serious allegations are leveled, is to facilitate a free, fair and impartial enquiry, prevent him from having access to the records, influencing the material witnesses and tampering the material evidence. Once the enquiry is completed, the authority who places the officer under suspension, would normally revoke the suspension, unless the officer is required to be continued under suspension.

The petitioner is a middle level officer in the managerial hierarchy of the respondent. Below him is the Manager (Imports) and above him is the General Manager (Exports and Imports), the Vice Chairman and Managing Director and the Board of Directors. The petitioner, being a middle level officer, vide office order dated 12.10.2001, has been allocated the duties, namely to scrutinize the files relating to the Division, ensure that files are promptly attended to and decisions implemented promptly, monitor the duties of the functional Managers reporting to him, and maintain the accounts of the Division with the assistance of the Accounts Officer. Pointing out to the duties allocated to him, the petitioner states that nowhere he has been vested with the power of decision making or decision taking,

except to implement the decisions of his superiors.

A perusal of the record would disclose that by the import of Timber through the associate, some fraud has taken place, which has resulted in the respondent suffering losses and the associate making profits out of the investment made by the respondent. The note file indicates that all the officers, right from the Manager (who had put up the note), the Deputy General Manager (who had forwarded the note file), the General Manager-Finance (who had given financial concurrence), the General Manager-Imports and Exports (who is responsible for imports and exports) to the Manager Director (who had approved the note files relating to import of timber and its sale from time to time), are responsible for the entire transaction relating to the import and sale of timber. Though the officers, right from the Manager to the Managing Director, who dealt with the files relating to import of Timber, are responsible for the import of timber, in which the respondent suffered huge losses, for the reasons best known to them, they have not taken any action against the Manager (Imports) and the Managing Director. The reason assigned by the respondent that since the Manager (Imports) had very little role to play, they have not taken any action, and that they merely issued memo of charges, cannot be accepted, for if the Manager, who had put up the note, had no role to play, could it be said that the petitioner, who had forwarded the said note to the General Manager (Imports and Exports, who in turn had placed the same before the Managing Director, had any role to play? Be that as it may, the duties entrusted by the respondent to the petitioner vide office order dated 12.10.2001, shows that he is not a decision making or decision taking authority, but is only an implementing authority, responsible for implementing the decisions promptly and monitor the duties of the functional Managers reporting to

him. Inasmuch as the petitioner is an implementing authority, responsible for implementation of the MoU, it has to be enquired into whether the petitioner in the matter of implementation of the terms and conditions of the MoU, had deviated, resulting in the respondent suffering losses. In that view of the matter, I am not inclined to interfere with the impugned order of suspension.

In **K. Sukhendar Reddy v. State of A.P.**[1], the apex Court held that the Government could not be permitted to resort to selective suspension or to place an officer under suspension just to exhibit and feign that action was being taken against the officers, irrespective of the high status in the service hierarchy. If the contentions urged on behalf of the petitioner are to be accepted, then the suspension of the petitioner would also be a case of selective suspension. However, since the Government is now being directed to review the matter, I do not propose to examine this question any further.

Admittedly except the petitioner, no other officer involved in the import of Timber has been suspended. Though the respondent contends that they had even placed the General Manager (Exports and Imports) under suspension, the fact remains, he is said to have been placed under suspension, not only for irregularities in the import of timber, but also for irregularities in the export and import of other items. Further having regard to the fact that the respondent has not taken any action against the General Manager (Finance), who is said to have retired on 31.12.2004, and one of the officers responsible for approving the finances, and having regard to the fact that the Government despite the respondent requesting for taking action against the erstwhile Managing Director, has not initiated any action so far, and having regard to the fact that the petitioner having been transferred as Deputy General Manager (Note Books Division), will have no access to the

records of the Exports and Imports Division, I deem it appropriate to direct the respondent to consider in the light of the judgment of the apex Court in **K. Sukhendar Reddy v. State of A.P.**, whether there is any necessity to continue the petitioner under suspension, and more so when he is said to have already submitted his replies to the charges on 27.12.2005 and additional charges on 09.06.2006. The respondent shall review the case of the petitioner for revocation of suspension, keeping in view the above, expeditiously. In the event, the respondent is not inclined to revoke the suspension, they shall having regard to the fact that the petitioner is due for retirement in June, 2007, complete the enquiry expeditiously, preferably within a period of four months.

Inasmuch as Sri Suthirtha Bhattacharya, IAS, Commissioner of Industries, who is appointed as Enquiry Officer to enquire into the charges alleged against the petitioner, while acting as in-charge Vice Chairman and Managing Director, is said to have taken certain decisions in relation to the import of Timber, I hope, as assured by the learned Standing Counsel for the respondent, the respondent, would replace him with another Enquiry Officer, so that the misgivings, if any, would stand removed.

With the directions, as above, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date: 14th September, 2006.

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[1] (1999) 6 SCC 257